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BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, DC 20554

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In the Matter of )  
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Amendment of Section 73.202(b), )  
Table of Allotments, )  
FM Broadcast Stations, )  
(Wickenburg, Salome and Surprise, )  
Arizona) )

MM Docket No. 01-345  
RM-10344

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch  
Policy and Rules Divisions  
Mass Media Bureau

**COMMENTS AND COUNTERPROPOSAL**

Circle S Broadcasting Co., ("Circle S"), licensee of Station KSWG(FM), Wickenburg, Arizona, and Wickenburg Associates, LLC, ("WAL"), the optionee for station KSWG, by their counsel, hereby submit their Comments and Counterproposal with respect to the Notice of Proposed Rule Making ("NPRM"), DA 01-2925, released December 21, 2001. The NPRM proposed the substitution of Channel 242C for Channel 242C3 at Wickenburg, and the modification of KSWG's license to specify operation on the higher class channel. In these Comments, and as will be explained, Circle S and WAL respectfully request that instead of substituting Channel 242C for Channel 242C3 at Wickenburg, the Commission instead should reallocate Channel 242C to Surprise, Arizona, as that community's first local service. In support of its position, Circle S and WAL state the following:

1. As reflected in the Commission's December 21, 2001 NPRM, Circle S originally proposed in its Petition that Channel 242C be substituted for Channel 242C3 at Wickenburg, and that Station KSWG(FM) have its license modified to specify operation on the

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higher channel at Wickenburg.<sup>1</sup> Circle S and WAL herein counterpropose that, in lieu of the substitution of Channel 242C at Wickenburg, that channel instead be reallocated to Surprise, as that community's first local service, and that KSWG(FM)'s license be modified accordingly. The Commission has recently adopted a policy wherein any petitioner filing a counterproposal to its underlying proposal must provide a reason or explanation as to why the counterproposal could not have been set forth earlier. Taccoa, Georgia, DA 01-2784 (2001). In this case, Circle S's counterproposal is being filed at the behest of WAL, an entity which holds an option to acquire the license for Station KSWG(FM). That option requires the filing of a Surprise counterproposal and that the license for Station KSWG be modified to become a Surprise station.

### **TECHNICAL ANALYSIS**

2. As demonstrated in the attached Technical Statement, Channel 242C can be allotted at a new reference point consistent with the Commission's distance separation requirements as long as the vacant channel allocation at Salome, Arizona is modified from Channel 241A to specify operation on Channel 270A. See Technical Exhibit. From the proposed reference point, a predicted 70 dBu signal can be provided over Surprise without shadowing. See Technical Exhibit.

3. The Technical Statement also demonstrates that the proposed 60 dBu will provide service to 21,800 persons whereas the current Class C3 coverage from Wickenburg covers 1,510,000 persons, resulting in a net gain of 1,488,200 persons. See Engineering Exhibit. There will be no loss area. In addition, the gain area will provide a first full-time aural service to 2,300 persons and a second full-time service to 100 persons.

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<sup>1</sup> In order to accommodate its request, Circle S also seeks the substitution of Channel 270A for vacant Channel 241A at Salome, Arizona. That aspect of Circle S's original proposal remains unaffected by this Counterproposal.

4. Circle S and WA hereby state that should the Commission approve the allotment of Channel 242C to Surprise as proposed, either will file an application consistent with the Commission's rules and will construct the facility upon grant of its application.

**CHANGE IN COMMUNITY OF LICENSE**

5. Petitioner desires to change the community of license from Wickenburg to Surprise, Arizona under the prerequisites set forth in *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 3870 (1989), *recons. granted in part*, 5 FCC Rcd 7094 (1990). First, the proposed use of Channel 242C at Surprise is mutually exclusive with the use of Channel 242C3 at Wickenburg. Second, Surprise has a 2000 U.S. Census population of 30,848 compared to Wickenburg's 2000 U.S. Census population of 5,082. Wickenburg will continue to receive aural service from Stations KBSZ and KSSL(FM). Thus, Surprise should be favored under the Commission's allotment priorities (Priority 3) as a first local service. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

6. Surprise is located in the Phoenix Urbanized Area. Therefore, a showing of independence must be provided. *See Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988). The Commission will consider eight factors in assessing the independence of a specified community: (1) the extent to which the community residents work in the larger metropolitan area, rather than the specified community; (2) whether the smaller community has its own newspaper or other media that covers the community's local needs and interests; (3) whether community leaders and residents perceive the specified community as being an integral part of, or separate from, the larger metropolitan area; (4) whether the specified community has its own local government and elected officials (5) whether the smaller community has its own telephone book or zip code; (6) whether the

community has its own commercial establishments, health facilities and transportation systems; (7) the extent to which the specified community and the central city are part of the same advertising market; and (8) the extent to which the smaller community relies upon the larger metropolitan area for various municipal services, such as police, fire protection, schools and libraries. *Faye and Richard Tuck, supra*, ¶ 36. All eight factors need not favor the applicant. If a majority of the factors demonstrate that the specified community is distinct from the urbanized area, the Commission will treat it as an independent community. *Id.: Parker and St. Joe, Florida*, 11 FCC Rcd 1095, ¶¶9-11 (1996) (finding that the proposed community was independent although it lacked its own telephone directory and local newspaper, and was included in the urbanized area's market by Arbitron); *accord Jupiter and Hobe Sound, Florida*, 12 FCC Rcd 3570, ¶3 (1997) (citing *Parker and St. Joe, Florida*).

7. In this case, a majority of the eight factors unquestionably demonstrate that Surprise is separate and independent from Phoenix:

(1) *Extent to which the residents of Surprise, Arizona, work in the City of Surprise.* The population of Surprise was 30,848 in 2000 (2000 U.S. Census Bureau). This represents an increase of 287% from the 1990 U.S. Census figure of 7,122 for Surprise. According to the 1990 U.S. Census Database, 367 of the 2,373 workers work in their place of residence. Since 1990, Surprise's population has grown greatly. Current 2000 census figures concerning Surprise's residents employed in Surprise are currently unavailable. The city projects that in 2005 the population will increase to approximately 80,200, or 259%. *See Exhibit 2.*

(2) *Newspapers and other media that cover Surprise's needs and interests.* Surprise is served by the daily newspaper, the *Daily News Sun*. The *Daily News Sun* publishes a weekly newspaper entitled *Surprise Today*, which contains news and information of special interest to the

residents of Surprise. Additionally, *Independent Newspaper* publishes a weekly newspaper, *Surprise Independent*, which focuses on the town of Surprise.

The City of Surprise maintains its own webpage at <www.surpriseaz.com>. By accessing this webpage, township residents may access a wide variety of facts and events concerning Surprise including information regarding city officials, public services, public and committee meetings, development, job opportunities, public schools and community events. Sample pages are attached.

(3) *Community leaders and residents perceive Surprise as being separate from Phoenix.* The City of Surprise has its own unique identity and history that are separate from that of Phoenix. Surprise is a growing community located along U.S. Route 60 and State Highway 93 in southwestern Arizona. Surprise was founded in 1929 and incorporated in 1960. Surprise became a city in 1992. The name “Surprise” came from Surprise, Nebraska, hometown of the city’s founder, Homer C. Ludden. Initially a small farming village, Surprise now encompasses more than 72 square miles including urban and commercial developments, ranches and industrial parks. According to the City of Surprise website, “Surprise strikes the perfect balance between the needs of the residential community and the growth of its business and industrial sectors.” Since 1960, the population of Surprise has grown from 500 to a city of 30,848. The city has approved an expansion of a planned transportation system and a planned 58,000 new residential dwellings to be constructed in the next decade. According to city data, more than 70% of its residents are under the age of sixty-five. The City projects an annual growth rate of 30% with the expectation that the population will exceed 80,000 by the year 2005. *See Exhibit 2.*

(4) *Surprise has its own local government and elected officials.* The government of the City of Surprise functions independently of any other governmental units, and operates under a council/manager form of government. The government structure is a mayor, six council members

and a city manager. The mayor and the city council members serve four-year terms. Among the departments are: Police; Fire; Parks, Recreation and Library; Public Works; Finance; Human Resources; Budget; and Water Services. Surprise also has a City Attorney and City Clerk. Among the municipal services provided by the City are: garbage collection; street maintenance; hazardous material disposal; newspaper recycling; animal control; and sewer. The 2002 fiscal year budget for the City of Surprise is \$178,405,950. *See Exhibit 2.*

(5) *The City of Surprise has its own zip codes and separate governmental listings in the local telephone company.* The zip codes designated exclusively for the City of Surprise are 85374, 85378, 85379 and 85387. The U.S. Postal Service operates two Post Offices at 14955 W. Bell Road, Surprise, Arizona, Surprise Branch, and 16554 N. Dysart, Surprise, Arizona, in Surprise. Residential and business listings for Surprise are found in the Greater Northwest Valley Telephone Directory published by Qwest, which contains a separate section for the Surprise government listings. *See Exhibit 2.*

(6) *The City of Surprise has its own commercial establishments and health facilities.* A number of these businesses identify with the community by using "Surprise" in their name, for example: El Mirage-Surprise Plumbing and Surprise Pawn Shop. Surprise retail businesses include: Safeway Grocery Store; Fry's Pharmacies; Desert Rose Pastries; Dented Can Grocery Store; Arizona Hair Company; Sun West Cleaners; 98 Cents Store; and Wal-Mart Super Center. Surprise has numerous dining establishments such as: Coyote Café; Desert Palms Restaurant; Jim Henry's at the Ridge; Mulligan's Deli; and Portofino Ristorante West. Banking services are provided by many establishments such as: Wells Fargo Bank and Rocky Mountain Bank. Surprise has numerous inns and hotels such as Country Inn and Suites-Carlson, Lodge at Sunridge, Quality Inn of Surprise and Windmill Inn of America. *See Exhibit 2.*

A number of health care providers are located in the City of Surprise. Medical services are provided by Spohn Medical Center and community residents have a variety of options to take care of their medical needs. Dental care is provided by Village Dental Center, as well as by various other local dentists. Veterinary services may be obtained from Crossroads Towne Center Animal and El Mirage Animal Hospital. *See Exhibit 2.*

Surprise is also home to a number of religious organizations, such as First Baptist Church of Surprise, St. Clare Catholic Church, Emmanuel Mennonite Church, Pentecostal Deliverance Church, New Covenant Church and West Bell Road Church of Christ. *See Exhibit 2.* There are many civic organizations and committees in Surprise such as Surprise Rotary Club and American Legion Post of Surprise.

Community activities and events that occur in the City of Surprise include: Spring Eggstravaganza; Fourth of July Festival; Fiestas Patrias; Fall Festival; and Holiday Affair.

(7) *Surprise is a separate and distinct advertising market from Phoenix.* According to the Chamber of Commerce and the newspapers serving Surprise, businesses in Surprise advertise in *Surprise Today* and *Surprise Independent*, which enable them to reach the residents of Surprise and does not involve directly Phoenix media sources. Residents may also access the City's webpage to learn about community events and news. Thus, the residents of Surprise do not need to travel to Phoenix or seek out other media sources in order to find what is happening in their community.

(8) *The City of Surprise has its own library and its police and fire protection are provided independent of any other jurisdiction.* The City of Surprise operates the Surprise Branch Library which serves the local population. The Library is open six days a week and houses approximately 7,000 volumes. It has computer and Internet access and a video collection. The library has several programs for children that are held during the summer months. It should be noted

that the residents of Surprise are very excited about the construction of a 23,000 square foot new library that will contain approximately 45,000 volumes, 60 computers, and a separate section for children with a variety of programs to meet their special needs.

The Dysart Unified School District which provides public school education to the children of Surprise. District schools located in Surprise are Surprise Elementary School and Kingswood Elementary School is located in Surprise. The Wee Rascals Preschool, Inc. and numerous childcare facilities are located in Surprise. *See Exhibit 2.*

Surprise maintains its own police and fire departments. The fire department is composed of more than forty (40) members which include full-time professional firefighters and support staff and two stations located in Surprise. The City of Surprise Fire Department provides a variety of fire safety and medical services to city residents as well as educational programs. According to a police department representative, the department is composed of a police chief, a commander, three (3) lieutenants, twelve (12) sergeants, six (6) detectives, and forty-one (41) officers. *See Exhibit 2.*

The City of Surprise has a full range of parks and recreation services that are available to its residents. Many sports programs are offered through the Parks & Recreation Department, such as tennis, soccer, softball, baseball and basketball. The City of Surprise offers seven public golf courses for its residents to use. Within the city, there are tennis courts, mini-parks and basketball courts.

The City is constructing a 10,500-seat multi-purpose Recreation and Major League Spring Training Complex on land owned by the City of Surprise. The Complex will be the home of the Texas Rangers and Kansas City Royals spring training facilities and other related player development programs commencing February 3, 2003. The City will use the facilities for adult and youth recreation programs, community events and programs. In addition, an amphitheater and a municipal center including, administrative offices, recreation and aquatic center, library and parks



are included in the complex. The target date for the opening of the facility is February 28, 2003. *See Exhibit 2.*

### CONCLUSION

8. The reallocation of Channel 242C to Surprise is in the public interest for several reasons. The proposal will provide a first local service to a community with a 2000 U.S. Census population of 30,848 and a first full-time broadcast service to 2,300 persons. The increase in 60 dBu coverage is 1,490,000 persons. Circle S Broadcasting, Inc. and Wickenburg Associates, LLC state either one of them will apply for Channel 242C at Surprise and construct the facility. Accordingly, it is respectfully requested that the Commission amend its Table of Allotments to reallocate Channel 242C to Surprise, Arizona and substitute Channel 270A for 241A at Salome, Arizona.

Respectfully Submitted,

WICKENBURG ASSOCIATES, LLC

By: Mark N. Lipp  
Mark N. Lipp  
Shook, Hardy & Bacon  
600 14<sup>th</sup> Street, NW  
Suite 800  
Washington, DC 20005  
(202) 783-8400

Its Counsel

CIRCLE S BROADCASTING, INC.

By: Lee J. Peltzman (by MAIL)  
Lee J. Peltzman  
Shainis & Peltzman, Chartered  
1850 M Street, NW, Suite 240  
Washington, DC 20036  
(202) 293-0011

Its Counsel

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